

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-11721, and Mitigation	)	PROPOSING APPROVAL OF A CHANGE IN
Project MP-183 for Groundwater Permit	)	PLACE OF USE AND CHARACTER OF USE,
Application G-17750, Jefferson County	)	PARTIAL CANCELLATION OF A WATER
	)	RIGHT, AND WITHDRAW OF A
	)	MITIGATION PROJECT

**Authority**

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

OAR 690-505-0500 to 690-505-0630 establishes the process in which anyone may submit a groundwater mitigation project to the Department for the purpose of providing mitigation for a ground water permit application in the Deschutes Groundwater Study Area.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

VAUGHN G. AND JACQUETTA V. WILLOUGHBY  
P.O. BOX 608  
CAMP SHERMAN, OR 97730

**Findings of Fact**

1. On January 15, 2014, Vaughn and Jacquetta Willoughby filed an application to change the place of use and character of use under Certificate 87472 to instream use. The Department assigned the application number T-11721.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

2. Notice of the application for transfer was published on January 28, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 9, 2014, consistent with land use requirements, prior to submitting the Instream Transfer Application, the applicant provided notification of the intent to file the instream transfer application to Jefferson County. Additionally, the Department provided notice of the proposed action to Jefferson County upon receipt of Instream Transfer Application T-11721.
4. On February 12, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to deny Instream Transfer Application T-11721 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 14, 2019, for the applicants to respond. The Draft Preliminary Determination proposed to deny Instream Transfer Application T-11721 due to deficiencies in the application, including:
  - a) Instream Transfer Application T-11721 did not include a map meeting current mapping standards. Specifically, the location of the portion of the right not affected by Instream Transfer Application T-11721 was not shown on the transfer application map.
  - b) Instream Transfer Application T-11721 did not include identification of how the proposed instream use should relate to other existing instream rights within the same stream reach.
  - c) Instream Transfer Application T-11721 also did not include identification of how to address the Domestic and Livestock uses authorized under Certificate 87472. These additional uses are tied directly to the irrigation use proposed for transfer to instream use.
  - d) The affidavit of use included with Instream Transfer Application T-11721 did not include the current Certificate number, a description of the place of use involved, and sufficient documentation to demonstrate that the water right had been used in the five years prior to the transfer application being submitted to the Department.
5. On March 14, 2019, the applicant's agent identified that the applicant no longer owned Tax Lot 2500, the southern parcel involved in Instream Transfer Application T-11721. The agent also indicated that the applicant would not need to use water from surface water for Domestic and Stock Use, the additional uses authorized under Certificate 87472. In addition, the agent also identified that the applicant would not likely be pursuing Groundwater Permit Application G-17750, for which this Instream Transfer Application had been proposed to provide mitigation under the Deschutes Groundwater Mitigation Program as a direct Mitigation Project. Rather this Instream Transfer Application will instead be used for instream flow restoration purposes.
6. On March 27, 2019, the agent, on behalf of the applicant, responded to the application deficiencies by providing a revised transfer application map, an affidavit of use with

supporting documentation, and an affidavit of partial cancellation of Certificate 87472 for 0.23 acre of irrigation and associated domestic and livestock use. These documents were originally received via email on March 14, 2019.

7. On March 28, 2019, the Department provided notification to the applicant's agent of additional discrepancies and deficiencies identified in Instream Transfer Application T-11721. The Department set forth a deadline of April 11, 2019, for the applicant to respond. The discrepancies and deficiencies were as follows:
  - a) Clarification of mitigation associated with Instream Transfer Application T-11721 and pending Groundwater Permit Application G-17750.
  - b) Ownership information for Tax Lot 2500 and whether the applicant had authorization to pursue the transfer for the portion of Certificate 87472 associated with this property.
  - c) Clarification as to how the proposed instream use should relate to other existing instream rights within the same stream reach.
  - d) Additional clarification of which portion of domestic and stock use to include in the transfer application and which to cancel.
  - e) With regard to the affidavit of use, sufficient documentation was needed to demonstrate that the water right had been used in the five years prior to the submittal of Instream Transfer Application T-11721 to the Department.
8. On April 10, 2019, the agent for the applicant notified the Department that the applicants would be withdrawing Groundwater Permit Application G-17750 and, therefore, Instream Transfer Application T-11721 would not be used as a mitigation project. Mitigation Project MP-183 should be withdrawn. Additionally, the applicant amended the transfer application to also include the uses of livestock and domestic use during the irrigation season. The agent also confirmed that any instream use established by this instream transfer should have the standard instream relationship with other instream rights.
9. On April 15, 2019, sufficient documentation was provided to support the affidavit of use.
10. On April 17, 2019, the Department notified the applicant's agent of additional discrepancies and deficiencies identified in Instream Transfer Application T-11721. The Department set forth a deadline of May 1, 2019 for the applicant's agent to respond. The deficiencies and discrepancies identified were as follows:
  - a) Integration of the landowner of tax lot 2500 by assignment of the application to include the additional landowner or by obtaining their consent to transfer.
  - b) Identification of how to address domestic use and livestock use outside the irrigation season.

11. On April 19, 2019, the Department issued an order withdrawing groundwater Permit Application G-17750, consistent with the applicant's request, as evidenced by Special Order Volume 112, Page 891.
12. On May 1, 2019, the applicant's agent requested some additional time to address the deficiencies.
13. On May 13, 2019, the agent for the applicant submitted, through email, copies of affidavits of partial cancellation for the livestock and domestic uses outside irrigation season for both properties. In addition, an affidavit of consent, signed by the landowner identified by the agent for lot 2500 (Elizabeth VanCampen) was also received. The Department also received two Reports of Ownership for Tax Lots 2502 and 2500. Original signed and notarized versions of the affidavits of partial cancellation and consent to transfer were received on May 15, 2019.
14. On May 23, 2019, the Department followed up with the applicant's agent and requested corrections be provided by June 6, 2019, for the following:
  - a) Reports of Ownership;
  - b) Affidavit of consent from Elizabeth VanCampen; and
  - c) Affidavit of partial cancellation for tax lot 2502.
15. On August 8, 2019, an updated affidavit of consent was received by the Department.
16. On October 10, 2019, the Department received revised Reports of Ownership to demonstrate the applicant is authorized to pursue Instream Transfer Application T-11721.
17. On November 14, 2019, the Department contacted the applicant's agent regarding corrections to the affidavits of partial cancellation for Certificate 87472. Based upon review of the Reports of Ownership, the Department identified that Tax lot 2502 is owned by both Vaughn and Jacquetta Willoughby. The affidavits of partial cancellation received by the Department were signed by Vaughn Willoughby and must be signed by both landowners in order to cancel the requested portion of Certificate 87472. The Department requested that complete affidavits of cancellation signed by both landowners be submitted to the Department by December 5, 2019. Complete affidavits of cancellation must be received for:
  - a) Cancellation of 0.23 acre of Irrigation and associated domestic and livestock use (year round) on tax lot 2502.
  - b) Cancellation of Livestock and Domestic and Livestock use (outside the irrigation season) associated with 1.57 acres on tax lot 2502.

18. On December 30, 2019, the Department received documentation demonstrating that Vaughn Willoughby has Power of Attorney to act on behalf of Jacquetta Willoughby. The affidavits of cancellation submitted to the Department and signed by Vaughn Willoughby will be used for cancellation along with the Power of Attorney documentation.
19. On February 26, 2020, the Department emailed a copy of the revised draft Preliminary Determination proposing to approve Instream Transfer Application T-11721 to the applicants and their agent. The revised draft Preliminary Determination cover letter set forth a deadline of March 26, 2020, for the applicants to respond. The agent for the applicants responded on their behalf and requested that the Department proceed with issuance of a Preliminary Determination.
20. The portion of the right proposed to be transferred is as follows:

**Certificate:** 87472 in the name of MARTIN HANSEN and CECIL W. AND SALLY A. DRINKWARD (confirmed by the Deschutes River Decree of the Circuit Court of the State of Oregon for Jefferson County. The decree is of record at Salem in the Order Record of the Water Resources Director in Volume 9, at Page 362)

**Use:** Irrigation, Livestock and Domestic use on 3.07 acres

**Priority Date:** 1888

**Rate:** 0.05 CUBIC FOOT PER SECOND (CFS)

**Limit/Duty:** The use is limited to 3.0 acre-feet per acre, measured at the point of diversion from the stream, which may be diverted at a rate not to exceed 1/60<sup>th</sup> cubic foot per second per acre during the irrigation season from May 1 to September 15, or its equivalent in case of rotation, measured at the point of diversion from the source.

**Period of Use:** May 1 to September 15, for irrigation

**Source:** LAKE CREEK, tributary to the METOLIUS RIVER

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SE NE	POD 2: 2320 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 16

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	9 E	WM	16	SE SE	3.07

21. A total of 9.21 Acre-Feet (AF) of water may be beneficially used annually under the existing right during the irrigation season.
22. Certificate 87472 identifies the use of water allowed under this right as Irrigation, Livestock and Domestic Use on 52.5 acres (the full water right). The use of water for Livestock and

Domestic are tied directly to the irrigation use by the Deschutes River Decree. During the irrigation season, no water may be diverted for Domestic and Livestock in addition to what is being diverted for irrigation use. Outside the irrigation season, a reasonable quantity of water may be diverted as needed for Domestic and Livestock use. However, the amount of water diverted outside the irrigation season for Livestock use may not exceed 1/10<sup>th</sup> of one cubic foot per second for each 100 head of livestock. And the amount of water diverted outside the irrigation season may also not exceed 1/10<sup>th</sup> of one cubic foot per second for each family.

23. Certificate 87472 identifies the source of water as Lake Creek. However, Lake Creek, as it flows out of Suttle Lake, branches into the North, Middle, and South Forks of Lake Creek. The Middle Fork Lake Creek rejoins the South Fork just below River Mile 2 on the South Fork. South Fork Lake Creek then flows into the Metolius River. The North Fork flows into the Metolius River upstream from the confluence of the South Fork with the Metolius River. Water for the place of use involved in Instream Transfer Application T-11721 is diverted from South Fork Lake Creek.
24. The point of diversion described in Finding of Fact No. 20, was added to a remaining right (Certificate 49695) following completion of the transfer process for Transfer Application T-3821, approved by the Department on August 22, 1980, as evidenced by Special Order Volume 33, Page 607. Remaining right Certificate 49695 was issued by the Department on October 28, 1980. However, it appears, based on review of the water right record, that this point of diversion may have been erroneously included in that remaining right certificate. The original certificate (13625), issued based upon the Deschutes River Decree, did not contain a description of a point of diversion nor does the Decree. Conditions and other information, such as point of diversion locations, are generally not added to remaining rights unless absolutely necessary to clarify or re-describe a water right. There does not appear to be any information in the water right record indicating that such actions were needed for this original remaining right. The description of this point of diversion has carried forward into each remaining right issued following subsequent cancellation and transfer proceedings.
25. The transfer application identifies that the point of diversion used for the 3.07 acres of irrigation under certificate 87472, proposed for transfer, is located at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SW	POD 1: 20 FEET SOUTH AND 276 FEET EAST FROM THE SW CORNER OF SECTION 16

26. The Watermaster identified as part of his review of Instream Transfer Application T-11721 that it would be physically impossible for the applicant to make use of the POD described in Finding of Fact No. 20 and that the POD described in the transfer application is correct and has been the POD historically regulated for the described place of use.

27. As the location description of POD No. 2 under Certificate 87472 is not usable for irrigation of the lands proposed for transfer by Instream Transfer Application T-11721 and because this error was not considered during the cancellation and previous transfer proceedings, and the water right holder was not offered an opportunity for requesting reconsideration of the remaining right Certificate 49695 (and any subsequent remaining right certificates) when it was issued, the POD No. 2 listed on Certificate 87472 does not appear to be binding upon the portion of the right affected by this transfer application.
28. Transfer Application T-11721 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
29. Transfer Application T-11721 proposes to change the place of use of the right to create an instream reach from the POD (as described in Finding of Fact No. 25) to the mouth of South Fork Lake Creek at the confluence with the Metolius River.
30. The applicant proposes the quantities of water to be transferred instream be protected as follows:

Instream Period	Instream Rate (CFS)	Instream Volume (AF)
May 1 to September 15	0.05	9.21

31. Based on revised application information, the applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date. In the application materials, the applicant identified that there are no existing instream rights on South Fork Lake Creek.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

32. Water has been used within the last five years according to the terms and conditions of the portion of the right proposed for transfer, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
33. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Instream Transfer Application T-11721.
34. At the full instream rate and volume requested (as identified in Finding of Fact No. 30), water may only be protected instream for 92 days. The full instream period requested by the applicant, May 1 through September 15, is 138 days. To prevent enlargement of the

right, the requested instream use requires modification. To maximize the instream use, the Department recommends reducing the instream rate to protect water over the full irrigation season (May 1 through September 15). The recommended instream use is as follows:

**Instream Reach:** From the POD (as described in Finding of Fact No.25) on the South Fork of Lake Creek to the mouth at the confluence with the Metolius River

Certificate	Priority Date	Rate Instream (CFS)	Volume Instream (AF)	Instream Period
87472	1888	0.03	9.21	May 1 through September 15

35. The applicant has concurred with recommended modifications to the instream use.
36. The proposed change, as modified, would not result in enlargement of the right.
37. The proposed change, as modified, would not result in injury to other water rights.
38. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
39. The protection of flows within the proposed reach is appropriate, considering:
  - a) The instream water right begins at the recorded point of diversion (as described and clarified in Finding of Fact No. 25);
  - b) The location of confluences with other streams downstream of the point of diversion;
  - c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
40. Within the proposed reach on South Fork Lake Creek, there are several existing instream water rights.
  - a) Certificate 76416, established under ORS 537.341 (state agency application process) for the purposes of providing required stream flow for Rainbow and Brown Trout, Kokanee Salmon, and White Fish for migration, spawning, egg incubation, fry emergence, and juvenile rearing and carries a priority date of October 11, 1990.
  - b) Certificate 59797, established under ORS 537.346 (conversion of minimum perennial streamflows), for supporting aquatic life and carries a priority date of February 20, 1962.



c) Certificate 93368, was established under ORS 537.348 (instream transfer process) and has a priority date of 1888.

41. Instream water rights established by instream transfer are generally additive to any existing instream water rights within the same reach established by other instream transfers and/or the allocation of conserved water program that also generally carry senior priority dates. In addition, instream water rights established by instream transfer also generally replace portions of any existing instream rights established by the state agency application process and/or minimum perennial streamflow conversion that usually have junior priority dates.
42. The proposed instream use, given a priority date of 1888, may be additive to Certificate 93368, which also carries an 1888 priority date. In addition, the proposed instream use may replace a portion of Certificates 74146 and 59797, with an earlier priority date, which carry priority dates of October 11, 1990, and February 20, 1962, respectively.
43. Certificate 76416, was established under Instream Water Right Application IS-70751 filed by the Oregon Department of Fish and Wildlife (ODFW). As part of the instream water right application, ODFW requested higher flows than what were granted during the months of July, August, and September. ODFW has also identified Lake Creek (including its forks) as an area needing flow restoration for recovery of salmonids during the summer months.
44. The South Fork of Lake Creek is tributary to the Metolius River, which is a state designated Scenic Waterway. The protection of flows necessary to maintain the free flowing character of the Metolius River for fish and wildlife habitat, and recreation is a matter of statutory policy.
45. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer process and instream lease) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, any new instream water right established by this transfer would provide protection for additional flows identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
46. By replacing a portion of other instream water rights, established pursuant to ORS 537.341 (state agency application process) and ORS 537.346 (conversion of minimum perennial streamflows), any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for supporting aquatic life and providing streamflows for various fish species and fish life stages under an earlier priority date.
47. During the period May 1 through September 15, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.

48. The total monthly quantities of water to be protected under the existing and proposed instream rights within the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

***Mitigation Project Review Criteria***

49. Vaughn and Jacquetta Willoughby (the Applicants) originally requested this instream transfer application be used to establish mitigation water for Groundwater Permit Application G-17750, filed by Vaughn and Jacquetta Willoughby.
50. The Department assigned this mitigation project number MP-183.
51. The Department consulted with representatives from ODFW, DEQ, Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2) on November 29, 2018. No comments were received in response to this notice.
52. On April 10, 2019, the agent for the applicant notified the Department that the applicants would be withdrawing Groundwater Permit Application G-17750, therefore Instream Transfer Application would no longer be used as a mitigation project. Mitigation Project MP-183 should be withdrawn.
53. Groundwater Permit Application G-17750 was withdrawn by the Department on April 19, 2019, as evidenced by Special Order Volume 112, Page 891.
54. Mitigation Project MP-183 will be withdrawn as part of this transfer order.

***Partial Cancellation of a Water Right***

55. On March 27, 2019, and on May 5, 2019, Vaughn Willoughby (property owner for tax lot 2502) submitted an affidavit to voluntarily cancel a portion of Certificate 87472. The portion of Certificate 87472 to be cancelled is as follows:

**Certificate:** 87472 in the name of MARTIN HANSEN and CECIL W. AND SALLY A. DRINKWARD (confirmed by the Deschutes River Decree of the Circuit Court of the State of Oregon for Jefferson County. The decree is of record at Salem in the Order Record of the Water Resources Director in Volume 9, at Page 362)

**Use:** LIVESTOCK, DOMESTIC, AND IRRIGATION ON 0.23 ACRES; AND DOMESTIC AND LIVESTOCK USE OUTSIDE THE IRRIGATION SEASON ASSOCIATED WITH 1.57 ACRES

**Priority Date:** 1888

**Rate:** 0.004 CFS FOR IRRIGATION OF 0.23 ACRES

**Limit/Duty:** The use is limited to 3.0 acre-feet per acre, measured at the point of diversion from the stream, which may be diverted at a rate not to exceed 1/60<sup>th</sup> cubic foot per second per acre during the irrigation season from May 1 to September 15, or its equivalent in case of rotation, measured at the point of diversion from the source.

**Period of Use:** MAY 1 TO SEPTEMBER 15 FOR IRRIGATION USE

**Source:** LAKE CREEK, tributary to the METOLIUS RIVER

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SE NE	POD 2: 2320 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 16

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	9 E	WM	16	SE SE	0.23

- 56. On December 30, 2019, the Department received documentation indicating that Vaughn Willoughby has Power of Attorney to act on behalf of Jacquetta Willoughby (co-owner of tax lot 2502) and has authority to the portion of Certificate 87472 (as described in Finding of Fact No. 54) absent consent from Jacquetta Willoughby.
- 57. On May 15, 2019, Elizabeth VanCampen (property owner for tax lot 2500) submitted an affidavit to voluntarily cancel a portion of Certificate 87472. The portion of Certificate 87472 to be cancelled is as follows:

**Certificate:** 87472 in the name of MARTIN HANSEN and CECIL W. AND SALLY A. DRINKWARD (confirmed by the Deschutes River Decree of the Circuit Court of the State of Oregon for Jefferson County. The decree is of record at Salem in the Order Record of the Water Resources Director in Volume 9, at Page 362)

**Use:** LIVESTOCK AND DOMESTIC USE OUTSIDE THE IRRIGATION SEASON ASSOCIATED WITH 1.5 ACRES

**Priority Date:** 1888

**Limit/Duty:** **For irrigation use:** The use is limited to 3.0 acre-feet per acre, measured at the point of diversion from the stream, which may be diverted at a rate not to exceed 1/60<sup>th</sup> cubic foot per second per acre during the irrigation season from May 1 to September 15, or its equivalent in case of rotation, measured at the point of diversion from the source.

**Source:** LAKE CREEK, tributary to the METOLIUS RIVER

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SE NE	POD 2: 2320 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 16

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
13 S	9 E	WM	16	SE SE

58. As identified in Finding of Fact Nos. 24 and 27, POD 2 described in association with Certificate 87472, appears to have been erroneously added to a previous remaining right in the water right history. The correct POD for the lands described in Finding of Fact Nos. 54 and 56 is the same as that described in Finding of Fact No. 25:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SW	POD 1: 20 FEET SOUTH AND 276 FEET EAST FROM THE SW CORNER OF SECTION 16

**Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-11721 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled.

This mitigation project is being withdrawn and will not result in mitigation pursuant to ORS 537.746 and OAR 690-505-0610.

*If Transfer Application T-11721 is approved, the final order will include the following:*

- 1. The changes in character of use and place of use to instream use proposed in application T-11721 are approved. The portion of the right that has been abandoned is cancelled.*
- 2. Water right certificate 87472 is cancelled. A new certificate confirming the instream water right shall be issued. A new certificate will also be issued describing that portion of the right not affected by this transfer and cancellation.*

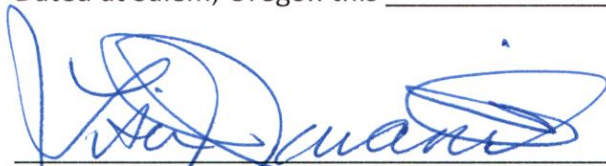
3. The instream right shall provide for the protection of streamflows as follows:

**Instream Reach:** From the POD (as described in Finding of Fact No. 25) on the South Fork Lake Creek to the mouth at the confluence with the Metolius River

<b>Certificate</b>	<b>Priority Date</b>	<b>Rate Instream (CFS)</b>	<b>Volume Instream (AF)</b>	<b>Instream Period</b>
87472	1888	0.03	9.21	May 1 through September 15

4. Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.
5. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.
6. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
7. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 87472 and any related decree.
8. The former place of use of the transferred water shall no longer receive water as part of this right.
9. **Mitigation Project MP-183:** The applicant has requested that Mitigation Project MP-183 be withdrawn. Mitigation Project MP-183 is withdrawn and will not result in mitigation.

Dated at Salem, Oregon this JUL 30 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Tom M. Byler, Director, Oregon Water Resources Department

Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

This Preliminary Determination was prepared by Laura Wilke. If you have questions about the information in this document, call Sarah Henderson at 503-986-0884 or Sarah.A.Henderson@oregon.gov.

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



**Oregon**  
Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

July 30, 2020

VIA E-MAIL

**Applicant**

Vaughn and Jacquetta Willoughby

PO Box 608

Camp Sherman, OR 97730

SUBJECT: Water Right Transfer Application T-11721 / Mitigation Project MP-183

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11721 and withdraw Mitigation Project MP-183. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Bend Bulletin newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please

consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact Sarah Henderson at 503-986-0884 or Sarah.A.Henderson@oregon.gov if we may be of assistance.

Sincerely,



Laura Wilke  
Transfer Specialist  
Transfer and Conservation Section

cc: T-11721  
Jeremy T. Giffin, District 11 Watermaster *(via e-mail)*  
Michele Sims, Agent for the applicant *(via e-mail)*  
Mathias , Upper Deschutes Watershed Council *(via email)*

encs